IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.2092 of 2001

1. Arudkar Dhananjay Gopalrao
2. Bansode Nandkumar Krishna
3. Bendale ziparu Chudaman
4. Bhat Purshottam Vithal
5. Daflapurkar Pradnya
6. Dhore Sunil Ramdaspant
7. Karandikar Parashuram Balwant
8. V.R.Kulkarni
9. Ms Marathe Sujala
10. Mukherji Prachi
11. V.R.Nanivadekar
12. Patil Gajanan Rangrao
13. Patil Jitendra Dhondiram
14. Patil Raosaheb Bhausaheb
15. Zanpure Deepa Anant
16. Rachayya R Arakerimath
17. Mandayam Anandalwar Sriranga Rajan
18. Ms Jadhav Sangeeta Dhananjay
19. Tilloo Arun Krishnarao
20. Vaidya Omkarprasad Shivrampant
21. Ms Veer Smita Kashinath
22. Ram Shiromani Verma

Nos. 1 to 22 working at Army Institute of Technology resident of Pune

23. Suryakant S Paranjape

adult, resident of Pune ..Petitioners

Vs

1. The State of Maharashtra
2. The Director of Technical Educational State Government of Maharashtra
3. Union of India
4. All India Council for Technical Education, New Delhi.
5. Pune Unversity
6. Army Institute of Technology Dighi Hills, Pune. .. Respondents.

Ms Kiran Bhagalia with Mr. R.N. Sanghvi for the petitioners.
Ms Jyoti Pawar, Addl. Govt Pleader for the respondent Nos 1 and 2.
Ms Beena Menon for respondent No. 4
Ms Revti Mohite-Dere for respondent No.6.

CORAM: H.S. BEDI, C.J., &
V.M. KANADE, J.
DATE: OCTOBER 5, 2006.

ORAL JUDGMENT(PER CHIEF JUSTICE):-

This petition arises on the following facts:

1. The petitioners are full time teachers working in the Army Institute of Technology, Pune – respondent No. 2 on conditions of service as per the Maharashtra Universities Act, 1994 and also Rules and Regulations laid down by the University of Pune, State Government of Maharashtra and the All India Council for Technical Education,(hereinafter referred to as the Council). Respondent No. 6 is a private institute of technical education founded by the Army Welfare Education Society, New Delhi and was established in the year 1994 and was granted approval by the Council on 16th June, 1994 and offers several technical courses to its students. While granting approval to the institute on 16th June, 1994, several conditions were laid down inter alia that the scales of pay which had been approved by the Council for the technical faculty would be granted to the teaching staff. After the

report of the 4th Pay Commission was submitted, the Council recommended that a uniform pay structure be applied to the teaching staff in all technical institutions which included respondent No.6 as well. The State Government vide its resolution dated 23rd March, 1990 recommended that the revised pay scales be made applicable to the teaching staff, librarians and instructors of physical education in all Engineering Colleges with effect from 1st January, 1996. The Vth Pay Commission was subsequently set up by the Central Government and on the basis of the recommendations made, the Central Government evolved a scheme for paying higher pay scales which scheme was accepted by the State Government by resolution dated 18th November 1999 and made applicable to all teachers, librarians and instructors of physical education in all Engineering Colleges in the State, whether run by the Government or privately, both aided and un-aided with effect from 1st January, 1996. Clause 10 of the resolution dated 18th December, 1999 gives details as to the applicability of the scheme and the manner in which the arrears due to the teachers as per the revision would be adjusted.

3. It is the petitioners' grievance that by a resolution dated 4th October, 2000, copy of which is annexed at Exhibit E to the petition, the State Government directed that the scheme of revised pay scales, which had been accepted on 18th December, 1999, should be made applicable to the teachers, librarians, and instructors of physical education in all Engineering Colleges with effect from 31st August, 2000 and not from 1st January, 1996. The period under dispute is thus from 1st January 1996 to 31st August 2000. It is this resolution which has been impugned by way of present petition.

4. Affidavits in reply has been filed by several of the respondents. Respondent Nos. 1 and 2 have in their reply highlighted that Exhibit E had been issued as the attention of the Government had been drawn to the fact that it would not be possible for unaided technical institutions to pay the arrears with effect from 1st January, 1996 due to paucity of funds but that notwithstanding the directive of the Government at Exhibit E, it was still open to the Institute to pay such salaries to its employees as it deemed appropriate.

5. An affidavit in reply has also been filed by the institute respondent No.6 pointing out that it was purely a private

organisation, receiving no aid either from the Government or non-Governmental agencies and its liabilities were being met by the fees received and by contributions from the Army Welfare Fund, and that the current fee structure could not take the burden of the arrears with effect from 1st January, 1996.

6. The learned counsel for the petitioners has first and foremost pointed out that in so far as the institute was concerned, there was no specific averment in its reply that it was not in a position to incur the enhanced financial liability imposed by making the report of the Vth Pay Commission applicable with effect from 1st January, 1996 and in that circumstance the very basis of the applicability of Exhibit E to the Institute did not arise. In support of this plea a reference has been made to Exhibit 2, the minutes of a meeting of the managing committee of the Institute held on 22nd February, 2001, and in particular to item Nos.9, 40 and 42 thereof that the institute was in a position to pay the arrears but it had been restrained from doing so on account of the issuance of the Government Resolution dated 4th October, 2000 Exh. E.

7. Referring the decisions of the Supreme Court and of the Bombay High Court, it has been submitted on behalf of the petitioners that the principle of parity of pay scales between the Government institutions on the one hand and non-government aided or non-aided institutions on the other, had to be maintained at all costs, notwithstanding financial difficulties. In this respect reliance has been placed on the judgments in Frank Anthony Public School Employees' Association vs Union of India and Ors AIR 1987 SC 311, Chandigarah Administration and Ors vs. Rajni Vali and Ors, 2000 (l) C.L.R 482, and Raskar Vidya Damodar @ Mrs Bhujbai Vidya vs. Maharashtra Arogyamandal and Ors, 2000 (4) Mah. L.J. 129. The learned counsel for the respondents, have, however, placed reliance on a decision of the Bombay High Court in the case of Sunanda Pandharinath Adhav and ors vs State of Maharashtra and ors, 2001(1) Mah. L.J 167 which is a case relating to the Government Resolution with which we are presently concerned and has pointed out that paucity of funds was a matter requiring serious consideration and as such pay parity could not automatically be applied to unaided educational institutions.

8. On a consideration of the arguments advanced by the learned counsel appearing for the parties before us, we find that the petition deserves to succeed. We observe from the affidavit filed by respondent No.6 that there is no specific denial that it was not in a financial position to pay the arrears with effect from 1st January, 1996 and what has been sought to be highlighted is that the fee collected by the Institute was meagre and that the balance expenses had to be met from contributions from the Army Welfare Fund and other sources. It has also been averred that it was unfair to expect an unaided private college such as the respondent No.6 institute, to match the pay and perks of the staff members of a college run by the Government or of other aided institutions. In this connection reference must once again be made to the minutes of the management committee meeting held on 22nd February 2001 wherein under item No.9 the Principal had informed the committee that the arrears to the non-teaching staff would be paid in full by the end of May 2001 either in cash amount or by depositing the amount in the Provident Fund Account of the employees by May 31, 2001 as per the Government Resolution. In item No.40 it has again been obseved that the Government Resolution dated 4th October, 2000 was unfair as it meted out discriminatory

treatment and as such should not applied to the institute. In item No.42 it is however, noted with a tinge of regret that the Government Resolution made it difficult to make the payment of arrears to the teachers but if the Government Resolutionwas amended, the management stood committed for payment to of arrears and would abide by the recommendations of the Vth Pay Commission. We therefore endorse the argument of the learned counsel for the petitioners that the institute was in a financial position to make the payment of arrears with effect from 1.1.1996 but had desisted from doing so on account of the directive Exhibith E. Having placed on record the factual aspect, the legal issues must now be dealt with.

9. The question as to whether the parity of pay scales between Government unaided and aided institutions should be maintained came up for consideration for the first time before the Supreme Court in the case of Frank Anthony Public School Employees' Association (supra)an unaided educational institution. The Supreme Court observed that the excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, which in turn, that would depend on the quality and the contentment

of the teachers and that conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which would ensure security of tenure and a decent living standard would consequently enable them to render better service. It was further observed that in this background it was essential that the pay and perks of the teachers would be reasonable so as to attract the very best from amongst the teaching community and it was thus essential that reasonable wages be given to the teachers and that the provision of the Delhi School Education Act providing that pay scales of the employees of private schools would not be less than the employees of the schools run by the government was therefore perfectly in order. The fear expressed by the schools that in such an event the school might have to be close down as being financially unviable was found to be without substance as the very quality of the teachers would draw a large number of good students which would ensure that the financial burden was taken care of.

10. A some what similar issue came up before the Supreme Court in the case of Chandigarah Administration and Ors (supra). In this case a secondary, aided school had received

permission to introduce classes 1 to 10 on grant in aid basis and applied for permission to start 10+2 classes. The Director of Public instructions, Union Territory, Chandigarah, granted the aforesaid sanction on the condition that the grant in aid would not be made available for the teachers for the upgraded classes. Some of the teachers being dissatisfied with the salaries moved the High Court claiming parity with the salary etc of those aided and government schools. The High Court allowed the petition and the matter was ultimately taken up to the Supreme Court by the Chandigarah Administration. The Supreme Court observed thus:

> "It is a Constitutional mandate that the State shall ensure proper education to the students on whom he future of the society depends. In line with this principle, the State has enacted Statues and framed Rules and Regulations to control/ regulate establishment and running of private schools at different levels. The State Government provides grant in aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account

> of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standard of teaching in an educational institution. Keeping in mind these and other relevant factors this Court in a number of cases has intervened for setting right any discriminatory treatment meted out to teachers and non-teaching staff of a particular institution or a class of institutions."

11. A Division Bench of the Bombay High Court in the case of Raskar Vidya (supra), following the decision in the case of Chandigarah Administration (supra) held that the stand taken by the school management that it could not stand the financial burden that would be imposed in case of parity with the government and government aided schools was repelled. The Court observed thus:

> "It is a well settled position in law by now that there has to be a parity of pay scales between the teachers of private schools which are aided as well as unaided. Similarly, there has to be a parity of pay scales between the

> teachers in private aided schools and schools run by the State Government or by the local authorities like the Zilla Parishads and Municipalities. It is not permissible in law for a private unaided educational institution to put forward the hypotheses that it is not liable to pay salaries to its teachers as per the pay scales prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and which are being made applicable to the teachers in aided private schools".

12. The learned counsel for the respondents, however, placed reliance on the decision of the Bombay High Court in the case of Sunanda Pandharinath Adhav and ors (supra) to contend that financial difficulty was a matter which had to be taken into account while considering the payment of salary to the teachers of an educational institution. It has to be noted that the very Government Resolution, which is in issue in this case, was in issue at that time as well and this Court while noticing the various judgments on the point found that the financial difficulties could not be reason for denial of

higher wages to a non-government un-aided school but observed that as the school management was in heavy debt running into crores and in that situation and in the peculiar facts of the case the benefits of Vth Pay Commission were required to be made applicable with effect from 1st May, 1999 and not with effect from 1st January 1996.

13. There is absolutely no averment in the affidavit in reply to the petition by the respondents that the institute is not in a position to make the payment of arrears to the teachers and on the contrary the minutes of the managing committee referred to above clearly reveal that it was in a position to do so but for a restraint put by Government Resolution Exh. E.

14. We accordingly allow this petition and direct the respondent -institute to disburse the arrears to the petitioners with effect from 1st January 1996 as per the procedure that has been evolved, within a period of one year from today.

Rule made absolute accordingly and the petition stands disposed of with no order as to costs.

CHIEF JUSTICE

V.M.KANADE J.